

**Office of Massachusetts Attorney General  
Martha Coakley**



**Program Guidelines**

***Face to Face Mediation Programs***

Fiscal Year 2012

**Statutory Requirements:**

1. Use of Funds: The Local Consumer Aid Fund ("LCAF") grant funds shall only be used for the following expenses involved with the intake, resolution, administration of consumer complaints and outreach concerning consumer topics.
2. Each Face-to-Face Mediation Program (LCP) will provide the level of service to the designated geographic area as specified in the Grant Award.
3. Pursuant to [M.G.L. c. 12, §8\(F\)\(J\)](#), all charitable organizations, except those organized exclusively for religious purposes, must register and file annual financial reports with the Non-Profit Organization/Public Charities Division of the Attorney General's Office. All organizations which are eligible for tax exempt status under [26 U.S.C. §501\(c\)\(3\)](#) are charitable organizations and must file such reports. Failure to do so will result in the loss of funds.
4. Unemployment Insurance The AGO requests that LCAF grant recipients choose the "contributory" rather than the "payments in lieu of contributions" method of financing unemployment benefits as allowed under the Employment Security Law ([151A, §14A](#)). LCAF grant monies may be used for the quarterly contributions to the unemployment insurance fund. However, under no circumstances can LCAF grant monies be used to pay unemployment benefits.

**Minimum Standards of Performance:**

1. Face to Face Mediation Programs (FTFMPs) must adhere to "The Uniform Rules on Dispute Resolution" as set forth by the Trial Court Standing Committee on Dispute Resolution.
2. FTFMPs may charge fees to parties for mediation according to the following provisions:
  - a. no party will be denied mediation due to an inability to pay;
  - b. the offer to waive the fee must be clearly disclosed to all parties when inquiring about the mediation service;
  - c. fees should not exceed the current small claims filing fee;
  - d. fees collected in this manner may not be commingled with the FTFMP account.
  - e. FTFMPs may not charge for a case referred from the AGO or a Local Consumer Program.
3. Each FTFMP is responsible for providing phone response to consumers a minimum of 37.5 hours per week. Additionally, each FTFMP must have an answering machine or voicemail system to receive calls outside of hours of business. When a call cannot be answered during business hours, calls must be routed to an answering machine or voicemail system.

4. Mediation should be made available to disputants at times other than the standard hours of operation.
5. Each FTFMP must have a functioning computer with internet access, word-processing capability, and spreadsheet capability.
6. A FTFMP must, at a minimum, have one email address dedicated solely to the work of the FTFMP.
7. Notice of office closings must be given to the Aaron Kravitz, Program Manager, at [aaron.kravitz@state.ma.us](mailto:aaron.kravitz@state.ma.us) or (617) 963-2096. Unless the closing is unanticipated, notice should be submitted at least three business days in advance. In the event of an office closing, the office's voicemail must indicate that the office is closed, when the office will reopen, and a number for immediate assistance.
8. No FTFMP may close for more than five consecutive business days without advance written permission from the AGO.
9. At least one staff member from the FTFMP is expected attend the regularly scheduled in-person or telephone conference calls offered by the AGO.
10. Each FTFMP agrees to accept for its services area mediation referrals forwarded from the AGO.
11. Each FTFMP agrees to accept all complaints filed directly with its office (as opposed to complaints forwarded by the AGO) regardless of the location of the parties. These complaints should be mediated or referred to another agency as appropriate.

**Relationship to the Office of the Attorney General:**

1. At any time reference is made to the FTFMP's affiliation with the AGO (in writing or verbally,) use the statement "working in cooperation with the Office of the Attorney General."
2. The FTFMP agrees to identify the AGO as a funding source for the consumer mediation program in any brochures, annual reports, or other funding materials.
3. The primary point of contact for FTFMP in the AGO is Aaron Kravitz, Program Manager in the Community Information and Education Division, (617) 963-2096 or [aaron.kravitz@state.ma.us](mailto:aaron.kravitz@state.ma.us).

**Mediation Process:**

1. Once a referral is made, staff should contact the parties by phone or letter to provide an explanation of the face-to-face mediation process.

- a. *A case should be counted as a "referral" if at least one party has actively contacted the program.*
2. An "Agreement to Participate" form should be signed, in accordance with [M.G.L. c. 233, § 23C](#) of the General Laws, by all parties before mediation.
3. All referrals should receive an I.D. # and be entered into a master log.
4. Terms of agreement should be clearly written on an agreement form; each party should receive a copy. One copy should remain in the case folder. Staff should follow-up on the settlement until all the terms are completed if possible. If no agreement is reached, the parties should be sent back to the referring agent or to small claims court.
5. At the end of each mediation, mediators and clients should fill out post mediation evaluation forms.
6. An agreement should be reported as upheld on the monthly report form if the majority of the term(s) are met.
7. A mediation case folder should contain:
  - a. an intake form;
  - b. a *signed* Agreement to Participate form;
  - c. a client contact sheet with dates/content of actions taken and conversations held;
  - d. post mediation evaluation forms;
  - e. a signed copy of the mediated agreement if in writing;
  - f. notes confirming that the agreement has been upheld and completed (if possible)
8. Complete case notes should be kept on the case folder for each complaint. Personal opinions of the mediator or any staff should not be recorded in the file.

#### **Records Retention:**

##### **For Complaints originating from the District Courts:**

1. Please consult the Administrative Office of the Trial Court for clarification and further information.

##### **For Complaints originating from the AGO or an LCP:**

1. All complaints files must be retained and accessible according to the. Requests to shred or otherwise destroy files older than 10 years must be made in writing (email is acceptable) to the AGO for submission to the Records Conservation Board for destruction permission. Records may not be shredded or otherwise destroyed until the AGO confirms in writing that such permission has been granted.
  - a. Note: Records containing personal information such as social security or credit card numbers must be destroyed by shredding in accordance with [M.G.L. c. 93I, § 2](#).

2. According to [M.G.L. c. 233 § 23C](#), all "memoranda" and "other work product" prepared by a mediator and a mediator's case files shall be confidential and protected from disclosure in any judicial or administrative proceeding. It can be interpreted under this statute that protection is also provided to mediation files requested under the Massachusetts Public Records Law. In the event of such a request, the FTF should contact Aaron Kravitz ([aaron.kravitz@state.ma.us](mailto:aaron.kravitz@state.ma.us), (617) 963-2096).

### **Press Inquiries**

1. All inquiries from the press related to information concerning consumer complaints and/or practices of a business must be referred to the press office of the AGO. The press staff may direct the media to the FTFMPs as appropriate, but will first notify the FTFMP director and will discuss the nature of the request and the type of information he/she is at liberty to discuss.
  - a. FTFMP Directors may not talk to the media about complaint-related information until they have received clearance from the AGO press office or other Attorney General staff. The AGO's Press Office can be reached at 617-727-2543.
  - b. Upon approval from the AGO's Press Office, the FTFMP may discuss generally with the press the type of service it provides and the kinds of complaints the program typically handles.
  - c. In any press contact, the FTFMP should mention that it is a recipient of funds disbursed by the AGO and that it works in cooperation with the AGO.

### **Education and Outreach:**

1. FTFMPs are encouraged to participate in education, training, and outreach activities in their communities with the funds they receive from the LCAF.
2. In their outreach or education efforts, FTFMP may only discuss mediation or dispute resolution issues or techniques in general. Under no circumstances are the FTFMP staff members to discuss specific companies, consumers, or mediations.

### **Reporting Requirements:**

1. ***All reports must be submitted electronically to [aaron.kravitz@state.ma.us](mailto:aaron.kravitz@state.ma.us).***
  - a) For the purposes of reporting, "referral" means an instance in which one of the parties involved in a potential mediation speaks or corresponds with a mediator or other FTFMP staff member about a specific potential mediation.
  - b) For the purposes of reporting "contact" means any passive outreach, such as mailings, general announcements about the availability of mediation, or advertising.

### **On a Quarterly Basis**

1. FTFMPs must submit the financial and program reporting forms by October 14th, 2011, January 13th, 2012, April 13th, 2012 and July 13th, 2012.

2. Documentation (such as vouchers, pay stubs, receipts or copies of receipts) need not be attached to the financial reporting form, but must be made available to the AGO upon request. Failure to provide such documentation may result in the loss of the remaining funds, and recuperation of expenses that cannot be appropriately documented.

As a condition of grant award, each FTFMP agrees that representatives of the AGO may at any time review the books and records of the FTFMP to ensure compliance with the terms of the grant award. Such inspection, review and/or audit by representatives of the AGO may occur at any time, with or without notice to the FTFMP.

**Legal Representation:**

1. The AGO is unable to provide legal representation to volunteers and/or paid staff of FTFMPs who are sued or subpoenaed with respect to mediations handled pursuant to these awards.

**Confidentiality/Conflict of Interest:**

1. Information the FTFMP gains through its affiliation with the AGO is confidential and must not be disclosed. Such information includes but is not limited to: internal memos, lists and discussions of pending investigations, as well as trends or cases being reviewed by the AGO.
2. Under no circumstances may an FTFMP elicit or attempt to elicit any information other than that pertinent to the resolution of the mediation, except if subject to civil or criminal legal process.
3. FTFMP staff/volunteers shall not disclose any information related to or obtained in the course of mediation to any person other than the participant or the employees of the AGO, without the explicit authorization of the participants.
4. Conflict of Interest: [M.G.L., Chapter 268A](#) (Conduct of Public Officials and Employees) may be applicable in some cases.